RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

77-290

MOTION FOR LEAVE TO PROCEED AS VETERAN

1846 hours
Mon, 8 Aug 1977
AbqNM., USA

Office of The Clerk
The Supreme Court of The United States
ATTN: Mr. EDWARD C. SCHADE
WDC., 20543

Dear Sir,

Thank you sir for your letter and return of my papers, which was dated July 29, 1977.

As I am acting in my own behalf (pro-se) respectfully request that a motion be granted, with the necessary leave to proceed as a veteran as outlined in paragraph 1, rule 54 of the "Rules of The Supreme Court of The United States" adopted June 15, 1970 - Effective July 1, 1970.

My honorable service with the United States Army was during the following periods:

Oct 1945 - Sep 1948

Feb 1950 - 9 Jun 1970

Feb 1950 - 9 Jun 1970

Total honorable service was 23 years, 3 months and 11 days reason and authority; 10 USC 1201 SPN 271 Retirement 50% Permanent Disability as recorded on copy of attached DD Form - 214.

This was forced permanent disability retirement for combat wounds, major wound was penetrating combat head wound thru edge of steel helmet, into and thru my left eye, total blindness that eye.

This after serving 17 years blind in one eye with written intentions to proceed on during my 24th year of active duty, and complete the normal career of 30 years active service.

Sir as the order of dismissal from the US Court of Claims No. 543-76 was dated May 27, 1977 there may be insufficient time remaining to docket my case, if this is true in my case, respectfully request an extension for the necessary amount of time to docket my case.

Sir if my requests listed above are not correct and proper, could you please send more formal examples for me to use as examples.

Thank you and sincerely,

2 Incls:
1-Copy of DD-214
2-Original typewritten copy of Petition for Writ of Certiorari to the US Court of Claims Case No., 543-76

Orlin Gentry ZOLE
Sergeant First Class, (E7)
US Army, "Ret" 525526219 - RA18141817
4713 Overland, NE - AbqNM., USA-87109
Phone 505-881-7294
(Acting in my own behalf)

77-290

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA

1. LAST NAME-FIRST NAME-MIDDLE NAME	2. SERVICE NUMBER	3. SOCIAL SECURITY NUMBER
COLE, ORLIN GENTRY	RA 18141617	525 | 52 | 6219

4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS	5a. GRADE, RATE OR RANK	5. PAY GRADE	6. DATE OF RANK	DAY	MONTH	YEAR
ARMY RA AMEDD	SFC	E-7		21	JUN	66

7. U. S. CITIZEN	8. PLACE OF BIRTH (City and State or Country)	9. DATE OF BIRTH	DAY	MONTH	YEAR
[X] YES [ ] NO	BAZINE, KS		21	NOV	27

SELECTIVE SERVICE DATA

10a. SELECTIVE SERVICE NUMBER	10b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE	10c. DATE INDUCTED DAY	MONTH	YEAR
NA	NA		NA	

TRANSFER OR DISCHARGE DATA

11a. TYPE OF TRANSFER OR DISCHARGE	11b. STATION OR INSTALLATION AT WHICH EFFECTED
RETIRED	WILLIAM BEAUMONT GEN. HOSP, TX.(EL PASO, TX)

11c. REASON AND AUTHORITY	11d. EFFECTIVE DATE	DAY	MONTH	YEAR
10 USC 1201 SPN 271 RETIREMENT 50% PERMANENT DISABILITY		9	JUN	70

12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	13a. CHARACTER OF SERVICE	14. TYPE OF CERTIFICATE ISSUED
2d ADMIN Co, 2d INF. DIV, USARPAC	HONORABLE	DD FORM 363A

14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED	15. REENLISTMENT CODE
NA	RE-4

SERVICE DATA

16. TERMINAL DATE OF RESERVE/UMT&S OBLIGATION DAY	MONTH	YEAR	17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY	17b. TERM OF SERVICE (Years)	17c. DATE OF ENTRY DAY	MONTH	YEAR
	NA		[ ] ENLISTED (Five Enlistment) [ ] ENLISTED (Prior Service) [X] REENLISTED [ ] OTHER	3	1	JAN	67

18. PRIOR REGULAR ENLISTMENTS	19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC	20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)
FIVE (5)	SFC/E-7	KANSAS CITY, MO

21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code)	22. STATEMENT OF SERVICE	YEARS	MONTHS	DAYS
SILVER CITY (GRANT) NM	a. CREDITABLE FOR BASIC PAY PURPOSES (1) NET SERVICE THIS PERIOD	3	5	9
	(2) OTHER SERVICE	19	10	2
	(3) TOTAL (Line (1) plus Line (2))	23	3	11
	b. TOTAL ACTIVE SERVICE	23	3	11
	c. FOREIGN AND/OR SEA SERVICE KOREA	0	5	29

23a. SPECIALTY NUMBER & TITLE	23b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER
00E40 RCTR & CAR COUNSELOR	166. 1

24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: Carried forward from previous DD-214s' - Parachute & Glider Badges, Purple Heart, ARMED FORCES EXPEDITIONARY MEDAL, Combat Infantry Badge, US Service Medal, Korean Svc Medal, NDSM, NDSM-CIC, ECMDL, GCMDL, GCMDL3dAwd, 1 Cert of Achievement, 6 ltrs of Commendation, 2 ltrs of achievement, & 5 ltrs of appreciation.

25. EDUCATION AND TRAINING COMPLETED

NONE this period.
Carried forward from previous DD-214s' College GED., GMC Sales Course, Parachute & glider Schools, Military Police School, Adjutant Generals School, Pre-Commission Sub-Course, 3rd Army Ordnance Supply School and Army Recruiting & Career Counseling School.

VA AND EMP. SERVICE DATA

26a. NON-PAY PERIODS TIME LOST (Preceding Two Years)	26b. DAYS ACCRUED LEAVE PAID	27a. INSURANCE IN FORCE (USGLI or USSLI)	27b. AMOUNT OF ALLOTMENT	27c. MONTH ALLOTMENT DISCONTINUED
NONE	60	[X] YES [ ] NO	35.60	NA

28. VA CLAIM NUMBER	29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE
C V 1417 77 92	[X] $10,000 [ ] $5,000 [ ] NONE

REMARKS

30. REMARKS

BLOOD GP: A
PARA 2-6, AR 601-280, APPLIES
COL BTRY (GED)

AUTHENTICATION

31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code)	32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED
7414 Conner Avenue Albuquerque, Bernalillo, NM 87116	

33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN
ROY C. JAMES, LTC, MSC, Asst. Adjutant	

DD FORM 1 JAN 68 214 — PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE EFFECTIVE 1 JAN 67. — ☆ GPO: 1968-281-112

ARMED FORCES OF THE UNITED STATES REPORT OF TRANSFER OR DISCHARGE

Incl #1

ORIGINAL COPY

Supreme Court, U. S.
FILED
AUG 19 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-290

Orlin Gentry COLE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition for a Writ of Certiorari
to the UNITED STATES COURT OF CLAIMS

Orlin Gentry COLE
Sergeant First Class, (E7)
United States Army, Retired
525526219 - RA18141817
4713 Overland, NE
Albuquerque, New Mexico - 87109
Phone 505-881-7294
Acting in my own behalf

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CITATIONS

Cases:

None

Statues and Regulations:

28 U.S.C. - 2501 (1970) 1

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

ORLIN GENTRY COLE, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

Petition for a Writ of Certiorari
to the United States Court of Claims

Orlin Gentry Cole prays that a writ of certiorari issue to review the order of dismissal of the United States Court of Claims dated May 27, 1977, and the petition filed Wednesday, the 22nd of December 1976 which was case number 543-76.

OPINION BELOW

The opinion of the United States Court of Claims was for dismissal, and the petition was dismissed.

JURISDICTION

The jurisdiction of this Court, (The United States Court of Claims) is invoked under 28 U.S.C. - 2501 (1970).

-/-

QUESTION PRESENTED

The question presented is a denial of due process where:

1. Although the Congress of the United States established The Army Board for Correction of Military Records, so that a common, ordinary soldier unlettered and untrained in legal procedure, could present a claim without extensive and expensive ligatition the (ABCMR) has failed to formally consider the Petitioners' requests for correction of his military records to include, reinstatement and continuation on active duty in the following instances:

a. 22 June 1970 - Petitioner submitted an application for correction of his military record to the (ABCMR). Denied 5 Aug 1970.

b. The following is a partial record of requests for reconsideration, made by the petitioner to the (ABCMR) & their responses to inquiries: Dec 71, Jun 72, 22 & 23 Sep 72, 16 & 17 Oct 72, Nov 72, Feb 73, Apr 73, May 73, Jun 73, 2 Aug 73 - (thru the DAV), 22 Aug 73, Jun 74, Sep 74, Dec 74, Feb 75, Apr 75, 12 & 18 Jun 75, Aug 75, Nov 75, Dec 75, Jan 76, Feb 76, Mar 76.

2. It was readily apparent that petitioner had received unfair, unjust, cruel and unusual treatment, especially after being grievously wounded, (penetrating combat head wound thru front edge of steel helmet which continued on thru left eye). Petitioner went on to serve on active duty in the United States Army for over 17 years blind in his left eye in both Parachute and regular infantry, with no further medical treatment on his combat wounds, when forced into involuntairy, permanent disability retirement when he had already started on his 24th year of active duty at the fairly early age of 42. Because of the custom, military men consider 20 years a normal career, but the law specifies 30 years as the normal career.

3. Although the information in paragraph 2 listed above was presented both in part and in its entirety in various ways & at different times, the (ABCMR) determined that insufficient evidence had been presented to indicate probable material error or injustice, denying the application without even a formal consideration, even thaough there was also a major error, (Physical Evaluation Board proceedings, listed combat wound as a "Non-Wartime Injury).

4. After asking 12 or more members of the Congress of the United States for assistance (several of them seriously wounded combat veterans, ie., eye shot out, hand or arm shot off), petitioner did not get any favorable action from these requests starting in approx., 1970 and continuing thru 1977, or into 1977.

5. Whether the United States Court of Claims acted in an overzealous manner in their order of dismissal, without favorable consideration shown to Petitioners' inital claim and petition of Thursday, the 8th of May 1975, which was before the 6 year deadline. "The right of petition is one of the fundamental privileges of a free people, there is no rule on how a petition shall be received".

6. Whether due consideration should of been shown to Petitoners' direct request and petition made to the President of the United States, President FORD, on Friday the 28th of March 1975 which asked in part for "the cancellation, correction or deletion of my forced retirement orders, SO 106, Hq Dept of The Army, dtd., the 2nd of June 1970 with unbroken retention and continuation on active duty in the United States Army, until I at least complete the normal thirty (30) year career to include the pay, allowances, full tenure and promotions ".

7. Whether the United States Court of Claims acted hastily in their order of dismissal without tolling the statue, or at least sending it back to Records Correction Board for further consideration, or bringing it before the (ABCMR) withaformal and full hearing.

STATEMENT

That Petitioners' forced early, permanent disability retirement from the United States Army, was cruel unusal and very shoddy treatment that a proud nation will not condone.

That Petitioners' forced retirement was not supported by evidence, and that it was inconsistent, arbitrary and capricious also an abuse of discretion while being unnecessarily punitive.

— REASONS FOR GRANTING THE WRIT

Petitioner submits that the action of the Department of The Army was inconsistent in that they approved a waiver for retention and continuation on active duty for petitioner in 1968 when he had well over 20 years active duty (approx., 22 yrs) when they needed him overseas again, with orders for a school and then immediate orders for Viet Nam.

Petitioner requested cancellation of the military school, with immediate assignment to Viet Nam, the school was cancelled with new orders assigning him to the 2nd Infantry Division astride the DMZ., in Korea with the whole outfit in the combat ready position.

Although Petitioners' DA Form 20 the major source of information for assignments plainly stated, "Blind Left Eye, No assignment to Combat Unit", he did not quibble or cry but went on overseas, when with over 30% disabled and with over 20 years active duty he was qualified to request retirement.

Petitioner submits that a soldier blind in eye is not as bad off as many people think, petitioner made parachute jumps with the 82nd Abn Division after being blinded in one eye and won several first and second places shooting or Army rifle & pistol teams.

It is an occupational hazard amongst dedicated professional soldiers to be blind in one eye, some of the better known were; Alexander the Great, Hannibal, Jefferson DAVIS, President, CSA., General Hobart GAY, PATTONs' wartime Chief of Staff, General BONESTEEL, Rhodes Scholar, Commanding General, US Forces in Korea 1969, General Lewis HERSHEY head of our Selective Service System.

CONCLUSION

It is very respectfully submitted that petition for a writ of certiorari should be granted.

Orlin Gentry COLE, SFC., (E7)
USA., Retired - 525526219
4713 Overland, NE
Albuquerque, NM., USA., 87109
Phone 505-881-7294
Acting in my own behalf

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SUPREME COURT, U.S.

In The

UNITED STATES COURT OF CLAIMS

No. 543-76

ORLIN G. COLE, Plaintiff,

v.

THE UNITED STATES OF AMERICA, Defendant

PETITION

(Filed, Wed, 22nd Dec, 1976

To the Honorable, The Court of Claims:

The plaintiff respectfully represents:

1. The jurisdiction of the Court is predicated on 28 U.S. Code 1491.

2. The plaintiff is a citizen of the United States. His Post Office address is 4713 Overland, NE., Albuquerque, New Mexico 87109.

3. The plaintiff volunteered in the United States Army, with a request for overseas duty on the 6th of October 1945, less than a year since his brother Olin D. Cole was killed in action, while serving with the 34th Infantry Division in Italy.

4. From the 6th of October 1945 until the 7th of September 1948, the plaintiff served honorably on active duty in the Army including a tour of occupation duty in Germany. Among his duties performed were, company guide and guidon bearer, battalion color guard, routine Military Police duties, and duty as a

He Received No Training For this, & did not hold MOS., or "Specality Number" of executioner, Shanghai, or ~~firing~~ Rifleman of a Firing Squad

Sergeant Wood this Assistant member of firing squads for the execution of war criminals, this
of Nurenberg. duty was most always performed by commissioned officers and
was a Trained non-commissioned officers of the first three enlisted pay grades.
"Hangman".
No "Blank" Rounds were used in any of the M-1 and 30.06 Armyissue Rifles, this was called to the attention of Lty Captain Captain said "we don't have any Blank Rounds" or words similar.

5. On plaintiffs first enlistment his duties called for a higher enlisted grade than Private First Class. Plaintiff was on a recommended list for promotion to Corporal, when approached by his commanding officer, Captain James L. Tulloch, who wanted to make a bet of $50.00 dollars that plaintiff would not be promoted. When the plaintiff would not bet with Captain James L. Tulloch who was both his commanding and superior officer, his name was removed from the promotion list. Captain Tulloch was later retired as a Lieutenant Colonel.

6. After a break in service of seventeen months the plaintiff volunteered again in the Army on the 1st of February 1950 serving honorably on active duty in the Army from that date to and including the 9th of June 1970. During this period plaintiff was recommended for Sergeant while in the field on a major maneuver, with conduct and efficiency ratings of superior. He was on orders to attend the Infantry Leadership Course at Ft Jackson, SC., which was a preparatory school for Officers Candidate School.

7. After graduating from Parachute and Glider School and the Adjutant Generals school plaintiff volunteered for Combat Duty in a front line rifle platoon in Korea, where he was grievously wounded (penetrating combat head wound into and thru the left eye). Which resulted in total and permanent blindness in that eye.

8. While the plaintiff was a patient at Tokyo General Hospital for treatment on his combat wound, the chief eye surgeon a US Army Officer, after showing him a two gallon pickled pigs feet jar which was about half-full of shrapnel and bullet damaged eye-balls, offered him a three day pass if he would approve the complete removal of his blind left eye.

9. Plaintiff left the hospital early and returned to full duty on jump status in the 82nd Airborne Division at Fort Bragg, NC., without physical evaluation board proceedings. He was shortly promoted to Sergeant for outstanding job performance.

10. From April 1953 after sustaining a penetrating combat head wound thru 9 June 1970 for a period of 17 years, plaintiff served continuously in both parachute and regular infantry plus other demanding jobs, ie., infantry squad leader, field first sergeant, engineer section, platoon and first sergeant, supply sergeant at company, hospital and brigade level, field recruiter and career counselor at division level. This was without further medical treatment on my head wound after leaving the hospital in August of 1953.

11. Plaintiffs left leg is 1/2 inch smaller than right leg, with left thigh 1 inch smaller, left knee has full Range Of Motion - no effusion. He injured his left knee in jump school in 1950, with subsequent injury in 1956 or 57, aspirated in 1960 no complications or further treatment since 1960. His "Assignment Limitations" shown on DA Form 20 are, "No assignment to combat unit. Blind left eye.

12. In a waiver request on his profile of 3E plaintiffs' commanding officer recommend the waiver saying, "I have observed him taking part in every normal activity and accepting all normal responsibilities including pistol team competition. I do not recall one instance where his profile became an excuse or precluded his normal occupation." On an "Application for Appointment" DA Form 61 dated 29 May 1961 R M ISAACSON, Captain, CE, Commanding made the following remarks; "An excellent capability as a leader with an extremely well diversified background of service. I am convinced this man will be an asset to any organization as a career Warrant Officer."

13. On the same form W C CARTER JR, Lt Col, CE, Commanding made the following signed remarks; "This man has the will and determination to succeed as a career Warrant Officer. He is knowledgeable beyond that indicated by his educational background and is still interested in learning new facts and ideas."

14. In a subsequent application for Warrant Officer which the plaintiff made during December 1961 has the 2D indorsement, dated 17 Mar 62 signed by Lieutenant General Frank A. CAMM then Colonel, CE, Commanding in which he made the following signed remarks; "Although Sgt Cole has displayed excellent capabilities on the job, he has not satisfactorily explained away an alleged indecent assault on 24 Jun 61. When the woman declined to testify against him, insufficient evidence remained to bring the case to trial."

"Sgt Cole's continuing refusal to comment one way or the other on the case has left a lingering doubt in my mind concerning his suitability for receiving a warrant".

15. Plaintiff did not want to embarrass the woman, who was married and an employee of the European Exchange System in Germany, she was also a German National. While he was driving his car, this woman put her hands between his legs and began fondling him thru his clothes. He asked her if she wanted him to stop, she said no keep on driving. He then told her she would have to stop that, or he couldnt' drive.

16. Colonel, Frank A. CAMM now a Lieutenant General in the US Army, graduate of the US Military Acadamey correction Academy, Rhodes Scholar, a double or triple "5 percenter" then and now considered one of the top brains in the entire Army told the plaintiff, "Hold up on your Warrant Application and I will not say anything about this, I was the Commanding Officer of an Officers' Candidate School & consider Warrant Officers' just as much an officer as the other officers. I hear that you are a very good teacher & instructor, especially in weapons, too bad there arent' Warrants now for weapons instructors", or words similar.

17. Plaintiff then asked why he wanted him to hold up on his Warrant Officer application, Colonel now Lieutenant General Frank A. CAMM replied "so as not to embarrass me concerning your alleged indecent assault, if you will withold your Warrant application until I leave so as not to embarrass me, I will not say anything further but if you insist on submitting it I will

have to remark on your alleged indecent assault", using these or words similar.

18. The Warrant Officer application with the very damaging signed remarks by Colonel Frank A. CAMM now Lieutenant General Frank A. CAMM became a permanent record in the plaintiffs file.

19. Plaintiff was not discouraged in his Army career, he was shortley thereafter recommended for Sergeant First Class, (E7) and was promoted to that enlisted pay grade on the 21st of June 1966. SFC., (E7) is the equal of Master Sergeant, (E1) of WWII emlisted pay grades in the Army. He was also in the Zone of Consideration for Temporary Promotion to Master Sergeant (E-8) listed on page 36 of Circular No. 624-71, Hq Dept., of The Army, Washington, DC dated 14 April 1969.

20. During this period plaintiff completed 39 college semester credit hours, 36 hours with the University of Omaha, and 3 hours with the University of Maryland also completing a Recruiter and Career Counseling course and a General Motors Sales Course. He also received 1 Certificate of Achievement, 6 letters of commendation, 2 letters of achievement and 5 letters of appreciation attesting to his excellent job performance, military skills and true professionalism. His suggestion on the abbreviation of all pay grades and ranks in the Army to three letters or not more than a combination

of three digits was sent thru channels clear up to the Dept of The Army who began using his suggestion Army wide in 1966 plaintiff did not receive any recognition for this. He also made a written suggestion that his wife made in long hand, to pay an enlistment bonus to soldiers to help obtain our volunteer Army. This got him chewed out in a written reply by General LAMBERT, who said in part "paying soldiers to enlist will not work in the United States, it would just create a mercenary Army and will never come about" or words similar.

21. Plaintiffs' 18 year old son just enlisted in the Airborn Infantry for a $2,500.00 dollar "enlistment bonus".

22. Plaintiffs' Physical Evaluation Board, which he made a personal appearance before, made a strong recommendation that he be retained and continued on active duty for at least 30 years active duty with a dual recommendation of "permanent disability retirement" if this was the decision of the Waiver Branch, Office of Personnel Operations.

23. After written requests and statements of intent to at least serve the normal career of 30 years, plaintiff was forced into early permanent disability retirement, at the age of just 42 with over 23 years active duty by the Waiver Branch, OPO. Because of the custom, military men consider 20 years a normal career, but the law specifies 30 years as the normal career.

24. At approximately 0830 hours on or about 11 May 1970 plaintiff called Marion Trano a civilian in Washington, DC., by telephone. While he was talking to Marion Trano, without preamble or even a "pardon me" another woman interrupted our conversation by saying in part; "Sergeant Cole did you write to Bradley & Johnson?". "Your waiver request was disapproved because of you and your wifes' letters to Johnson & also because of your deteriorating physical condition, we done you a favor to let you appear before a formal Physical Evaluation Board". Using these words or similar as to import and meaning. Plaintiff asked her, "Mam, who is speaking please?" she replied, "this is Major Davis of the Waiver Branch, OPO.,"or words similar.

25. Plaintiff prior to this had been on orders for duty assignment in Viet Nam. He had returned from the 2nd Infantry Division in Korea in Oct of 1969 where it was in the ready position on the DMZ., prior to his assignment to the 2nd Infantry Division, he had tried on two separate occasions to change his Korean assignment for one in Viet Nam. With 22 years active duty he was eligible to apply for retirement, but instead he went ahead and took the assignment in Korea.

26. Plaintiff received a signed statement from Marion Davis, Major, AG., dated the 29th of November 1976 in which she states in part: "The Board voted to deny his request based on his physical disability which left him incapable of

performing his military duties in a safe or completely satisfactory manner". "Should the board vote to deny a waiver request, the entire case was then reviewed by the Division Chief and the Commanding General, each case was given a fair and full hearing, no waiver was refused if the board felt the individual could continue to perform in the military at an acceptable level."

27. Major Marion Davis closed her sworn statement with the following: "I did not, repeat did not, relay to Mr. Cole, either via telephone or in letter form, that the reason for his medical forced retirement was because of letters by him to people in authority."

28. Plaintiff received a letter dated 18 Nov 1976 from the Records Center, St. Louis, Mo., signed by Robert S. Young, Brigadier General, USA., Commanding. General Young states in part; "Examination of your official military personnel file shows that you have been informed numerous times that there are no copies of waiver branch proceedings in your file. Accordingly, we are unable to comply with your request for copies of such documents."

29. Plaintiff has exhausted his administrative remedies, he made a request to The United States Court of Claims on Thursday, the 22nd of May 1975 for a reversal in the denials of the Records Correction on his requests for reinstatement on active duty in the Army.

30. The above-described conduct of the defendant was illegal in the following respects:

(a) That the Army is subject to higher civilian authority, and is subject to both military and civil law.

(b) Plaintiff does not know what bearing the very damaging statement signed by Colnel Frank A. Camm now a Lt., General on his Warrant Officer application, had on his forced permanent disability retirement. This statement was made a permanent part of his records. The "deal" that Col., Camm wanted to make with the plaintiff outlined in previous paragraphs 16 & 17 showed that he had no case against the plaintiff, and that his main interest was keeping plaintiff from going ahead with his Warrant Officer Application.

(c) The decision to place plaintiff on the permanent Disability Retired List was not supported by the evidence that his physical disability left him incapable of performing his military duties in a "safe or completely satisfactory manner."

(d) The decision to permantely retire the plaintiff was in violation of (2) (a) & (e) of C 3, AR 635-40 which covers the "Review of PEB proceedings." And Section III paragraph 4-8 C 1, AR 635-40 which sets forth the "Right to formal hearing."

(e) The forced retirement was not supported by evidence.

(f) The forced retirement was arbitrary, capricious, an abuse of discretion, and unnecessarily punitive.

Amendments, 1-5-6-8

(g) Although plaintiff was a true, skilled, dedicated professional soldier, he was also a citizen who had more than earned the rights, privileges and full protection of the Consitution of The United States. Which his forced retirement was in direct violation of his very basic consitutional rights.

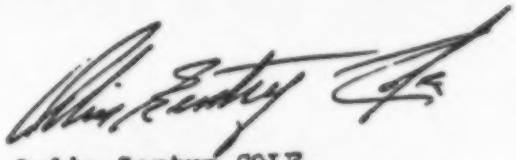
WHEREFORE, plaintiff demands judgment against the United States:

(a) For reinstatement on active duty in the Army to the position of Command Sergeant Major, (E-9) together with any and all benefits of which he may have been deprived as the result of his forced early permanent disability retirement.

(b) Setting aside and expunging from the Army records the findings that plaintiffs' "physical disability left him incapable of performing his military duties in a safe or completely satisfactory manner."

(c) For the pay, allowances, full tenure and the two non-commissioned officer promotions to Master Sergeant, (E-8) and then to Command Sergeant Major, (E-9) of which he has been unlawfully deprived as the result of his unfair and unjust, early forced permanent disability retirement and being placed on the Permanent Disability Retired List.

(d) For such other and further relief, as to the Court may seem just and proper including interest, costs and damages.



Orlin Gentry COLE,
Sergeant First Class, (E7)
United States Army, Retired
525526219 - RA18141817
4713 Overland, NE
Albuquerque, New Mexico - 87109
Phone 505-881-7294
Acting in my own behalf

1155 hours
Sat, 26th of March 1977
AbqNM., USA

ORLIN G. COLE,
Plaintiff,

v.

THE UNITED STATES,
Defendant.

PLAINTIFFs' RESPONSE TO MOTION TO DISMISS:

Plaintiff very respectfully requests the United States Court of Claims not to dismiss Case Number, 543-76 and to carefully consider my petition of Thursday, the 8th of May 1975 as my inital claim and petition, with concurrence and in conjunction with my petition of Wednesday, the 22nd of December 1976. (Please see attached copies of both petitions)

CONCLUSION:

Although plaintiffs' inital claim and petition to the US Court of Claims dated Thursday, the 8th of May 1975 was possibly technically incorrect in some aspects, it was duly submitted in good faith by a private citizen of the United States, and a soldier unjustly placed on the permanent disability retired list who served 17 years on active duty in many demanding assignments including both parachute and regular infantry duty after being grievously wounded.

Plaintiff suffered a penetrating combat head wound thru the left eye, with resulting total blindness that eye, while serving the nation as a special volunteer Combat Infantryman.

Very respectfully submitted,

Orlin Gentry COLE, Sergeant First Class
United States Army, Retired - 525526219
4713 Overland, NE
Albuquerque, New Mexico, USA., 87109
Phone 505-881-7294

1121 hours
Tue., 12th of Apr 1977
AbqNM., USA

Orlin G. COLE,

Plaintiff,

v.

The UNITED STATES,

Defendant.

No. 543-76

PLAINTIFFs' CONTINUING RESPONSE TO MOTIONS OF DISMISSIAL:

Plaintiff respectfully again requests the United States Court of Claims not to dismiss Case Number 543-76 and further to carefully consider the papers attached to this response.

A-R-G-U-M-E-N-T:

Plaintiffs' re-enlistment date fell in December of 1969 which was denied along with his requests for retention and continuation on active duty to at least complete the normal thirty (30) year career on active duty. His forced disability retirement came about in June of 1970 approx., one (1) year after plaintiff made inital request for retention, continuation and re-enlistment.

Right to re-enlistment is a continuing claim not subject to statue. Please see DIAMOND v. The US Court of Claims 344 Fed 2d 703.

It is a matter of record that plaintiff has submitted many requests, to the Army Board for Correction of Military Records since 1970 with a complete final type physical examination submitted as new evidence early in 1976 to both the ABCMR., and the US Army Physical Disability Agency. (Please see attached copies of these records).

Respectfully submitted,

Orlin Gentry COLE, Sergeant First Class,
USA., Retired, 525526219 - RA18141817
4713 Overland, NE
AbqNM., USA., 87109
Phone 505-881-7294

IN THE UNITED STATES COURT OF CLAIMS

No. 543-76

ORLIN G. COLE

v.

THE UNITED STATES

Orlin G. Cole, pro se.

Robert M. Hollis, with whom was Assistant Attorney General Barbara Allen Babcock, for defendant.

Before DAVIS, Judge, Presiding, NICHOLS and BENNETT, Judges.

O R D E R

The court has before it defendant's motion to dismiss the petition of plaintiff who appears in his own behalf. Defendant contends that the claim is barred by the statute of limitations, 28 U.S.C. § 2501 (1970), which requires that a suit be filed within 6 years after the claim first accrues.

Plaintiff is a former sergeant in the United States Army who, with the exception of a break-in-service from 1948 until 1950, was on active duty from 1945 until June 10, 1970, when he was discharged for permanent physical disability after consideration of his case by a formal Physical Evaluation Board which refused him a further waiver. Plaintiff had suffered the loss of an eye from a combat injury during the Korean conflict in 1953 but had been continued on active duty by waiver.

The petition claims that the Army was arbitrary and capricious when it failed, further, to waive his disability and

involuntarily retired him. He also alleges that defendant violated certain Army regulations in the action it took. He demands reinstatement to duty with back pay and allowances, promotions, and the correction of his record to show that he is capable of performing his military duties. The petition was filed on December 22, 1976, which is clearly more than 6 years from the accrual of his claim on June 10, 1970, when he was separated from active duty. The claim is thus barred by the statute of limitations which must be strictly construed since it is jurisdictional. Kirby v. United States, 201 Ct. Cl. 527, 531 (1973), cert. denied, 417 U.S. 919 (1974); Cochran v. United States, 205 Ct. Cl. 876 (1974).

Plaintiff attempts to convince us that we should consider his letter to the Clerk on May 8, 1975, as a proper petition to the court. In this letter plaintiff complained that the Board for the Correction of Military Records had refused to grant him relief and had held that his forced retirement was not unjust. Plaintiff asked in the letter that the court reverse the board. In response he was advised in a letter by the Clerk on May 14, 1975, that he would have to file a petition in conformity with the Rules of the Court of Claims, which were provided to him. This was a clear indication that the letter of May 8 could not be considered a petition. On May 22, 1975, plaintiff wrote to the Clerk again, this time asking if he could represent himself and was advised that he could do so. Plaintiff, of course, had already been told by the Clerk to file a petition in conformity with the Rules, yet he inquired in his May 22, 1975, letter as to whether his letter of May 8 could be considered as an initial claim. Plaintiff did not file a petition before the statute ran out on June 10, 1976, but on July 12, 1976, as shown by the Clerk's file, he addressed a letter to the Chief Judge asking for reinstatement with back pay and allowances. The Clerk responded to that letter on July 26, 1976, pointing out again that for his claim to be considered, plaintiff would have to file a petition pursuant to the Rules and suggesting the advisability of counsel, but calling plaintiff's attention

to the 6-year statute of limitations, citing 28 U.S.C. § 2501 (1970). He returned to plaintiff the supporting papers plaintiff had submitted with his letter to the Chief Judge.

Months then went by and on December 22, 1976, plaintiff finally filed his petition. We note that this was a year and one-half since his May 8, 1975, letter and the Clerk's letter of May 14, 1975, first advising plaintiff that he would have to file a petition. Looking at the matter in the light most favorable to plaintiff since he is not a lawyer and is representing himself, and has an honorable service record, he had sufficient time and was on notice of what he had to do to present a claim which would be recognized by the court and would be answerable by defendant. Plaintiff has given no reason to excuse this delay, and we see no basis for tolling the statute and allowing this tardy claim to be considered on the merits.

IT IS THEREFORE ORDERED that because the court lacks jurisdiction over plaintiff's claim since it is barred by the statute of limitations, 28 U.S.C. § 2501 (1970), upon consideration of the motion and response, without oral argument, the motion to dismiss is allowed, and the petition is dismissed.

BY THE COURT

MAY 27 1977

Oscar H. Davis
Judge, Presiding

1200 hours
Tue., 14 Dec 1976
AbqNM., USA

S-W-O-R-N - S-T-A-T-E-M-E-N-T:

At approximately 0830 hours on or about 11 May 1970 I called Marion TRANO a civilian in Washington, DC while talking to her another woman interrupted our conversation by saying in part; Sergeant COLE did you write to BRADLEY and JOHNSON? Your waiver request was disapproved because of you and your wifes' letters to JOHNSON & also because of your deteriorating physcial condition. We done you a favor to let you appear before a formal Physical Evaluation Board. Or words similar as to import and meaning.

I asked "Mam who is speaking please"? she replied this is Maj., DAVIS of the Waiver Branch, OPO., or words similar.

Further the deponent sayeth not.

Orlin Gentry COLE
Sergeant First Class,
USA., Retired - 525526219
4713 Overland, NE - 87109
Albuquerque, New Mexico, USA
Phone 505-881-7294

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

Subscribed and sworn to before me, a notary public, by ORLIN GENTRY COLE, this 14th day of December 1976 at Kirtland Air Force Base, New Mexico.

Evelyn L Latham
Notary Public

My commission expires
17 August 1977

STATEMENT 29 November 1976

I was assigned to the Office of Personnel Operations (OPO) as an Action Officer/Assistant Branch Chief for approximately 10 months (15 Sep 69 - 20 Jul 70). During this period, I reviewed and processed hundreds of waiver request cases, in addition to the other many duties handled by the Waiver Branch. It is virtually impossible to recall each case and it is possible for me to recall Mr. Cole's case only because he has kept it alive by writing a number of letters during the years since he has been retired, many of which have been referred to my office of assignment for a draft reply.

At the time Mr. Cole was being processed for waiver review, he wrote a great many letters to individuals in authoritative positions requesting assistance with his waiver request. A large percentage of those letters were referred to the Waiver Branch for reply. I assure you that should Mr. Cole desire to present the reply he received to those many letters, they would all show that the reason given, and the only reason that any waiver request was not favorably considered, was because the Board voted to deny his request based on his physical disability which left him incapable of performing his military duties in a safe or completely satisfactory manner. As I recall, Mr. Cole was retired medically after more than 20 years of active duty.

A board of officers reviewed each waiver case and voted independently of each other. Should the board vote to deny a waiver request, the entire case was then reviewed by the Division Chief and the Commanding General. Each case was given a fair and full hearing. No waiver was refused if the board felt the individual could continue to perform in the military at an acceptable level. At no time was any member refused a waiver based on anything other than his physical condition. Letters he or she may have written to people in authority had no bearing on the board's decision.

Mr. Cole was not, repeat was not, told he was being refused a waiver because he wrote letters, either by myself or any other member of the Waiver Branch. The Branch had a standing rule that we never gave an answer to a waiver request except in letter form, not by telephone. Letters written by the applicants to persons in authority did not have any influence on the members of the board. Almost all applicants, who requested waivers to remain on active duty, wrote letters to persons in authority, requesting assistance.

1

STATEMENT (Continued) 29 November 1976

I did not, repeat did not, relay to Mr. Cole, either via telephone or in letter form, that the reason for his medical forced retirement was because of letters written by him to people in authority.

End of Statement.

Signed:

MARION DAVIS
Major, AG

Subscribed and sworn to me this 29th day of November, 1976, in the county of Arlington, state of Virginia.

1 September 1980
My Commission Expires .....

Notary Public

1

CIRCULAR
No. 624-71

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., 14 April 1969

Expires 14 April 1970

PROMOTIONS

ZONE OF CONSIDERATION FOR TEMPORARY PROMOTION TO MASTER SERGEANT (E–8)

1. **General.** *a.* A Department of the Army Promotion Selection Board will convene at Washington, D.C., on 2 June 1969 to consider noncommissioned officers for promotion to Master Sergeant (E–8).

b. The board will be composed of a general officer, 16 field grade officers, five command sergeants major and five staff sergeants major.

2. **Zones of consideration.** *a.* The primary zone of consideration will include noncommissioned officers serving on active duty in pay grade E–7 who have a date of rank of 31 December 1966 or earlier and who have a Basic Active Service Date (BASD) of 31 December 1963 or earlier.

b. The secondary zone of consideration will include noncommissioned officers serving on active duty in pay grade E–7 who have a date of rank of 31 December 1966 or earlier and who have a Basic Active Service Date (BASD) of 31 December 1957 or earlier.

c. Paragraph 6 contains the names of noncommissioned officers in the primary zone of consideration as reflected in Department of the Army records on 1 April 1969. The names appear in truncated form as entered on the Enlisted Master Tape Record (EMTR). A listing of those who meet secondary zone eligibility criteria will not be published.

3. **Instructions for commanders.** *a.* Commanders and heads of agencies responsible for maintenance of DA Form 20 (Enlisted Qualification Record) will cause records to be checked against the list in paragraph 6 to insure that all individuals who meet the primary zone eligibility criteria are included. Where appropriate, commanders will dispatch a message to Chief of Personnel Operations, ATTN: EPPMS, Department of the Army, Washington, D.C. reporting name, ASN, BASD, DOR, and PMOS of individuals who, based solely on criteria stated in paragraph 2*a* should be removed from or added to the primary zone listing. An information copy of the message will be sent to Commander, U.S. Army Data Support Command, ATTN: AGRZ-PD, Department of the Army, Washington, D.C. 20310. These reports will not be acknowledged.

b. Commanders will immediately advise Chief of Personnel Operations, ATTN: EPPMS, Department of the Army, Washington, D.C. by electrical means of noncommissioned officers listed herein who become ineligible for promotion under the provisions of DA message 902807, 27 March 1969, and AR 600–31.

c. Official communications concerning recommendations for promotion, and all letters of commendation or appreciation, forwarded to Chief of Personnel Operations, ATTN: EPADS, Department of the Army, Washington, D.C. 20310, will be considered by the board if received by 12 June 1969. Promotion packets are not required.

4. **Instructions for individuals.** *a.* Any noncommissioned officer who believes he is within the primary zone of consideration and whose name is not included in this circular will notify his unit personnel officer.

b. An individual is not authorized to appear in person before a selection board in his own

TAGO 25194A

Name	Service No.
Cobb, Vester Ls	RA37610854
Cobb, Wallace E	RA11018809
Cobb, Walter, Jr	RA14375540
Cobb, Willie	RA14494612
Coble, Clarence L	RA13239440
Coburn, Glenn H	RA14322802
Cochran, Joe F	RA14226452
Cochran, Leslie C	RA34783211
Cochran, Lynn D	RA16300804
Cochran, Marshall	RA55304308
Cockerham, Lloyd H	RA38552526
Cockerham, M. N	RA18263513
Cockerham, Ray L	RA54052900
Cockern, Napoleon R	RA18357990
Cockfield, Dewey L	RA13214703
Cockran, Therman R	NG17473914
Cockrell, Carrol N	ER25163150
Coddington, Richard	RA17381326
Codispote, Vincent	RA52253961
Cody, Brandon, Jr	RA53031490
Cody, Edward F	RA36226172
Cody, Joseph M	RA15497695
Coe, Emery R	RA28091133
Coe, Lawrence J	RA36504870
Coe, Royce E	RA44136083
Coe, William D	RP13255492
Coeburn, Jack L	RA13423744
Coffey, Clifford	RA55359453
Coffey, Dexter D	RA14229168
Coffey, J. W	RA14056458
Coffey, Jack J	RA56082586
Coffey, James J	RA53100537
Coffin, John T	RA39135682
Coffin, Robert O	RA51039652
Coffman, Bobby A	RA13431399
Coffman, James P	RA13279162
Coffman, John T	RA38731382
Coffman, Ralph T	RA13417819
Coffman, Vade B	RP36411461
Cofield, Earnest	RA53080369
Cofresi, Gilberto	RA30408172
Cogdell, Leon	RA54057001
Cogdill, Donald E	RA17246800
Coggins, Marion W	RA53215269
Coghill, John M	RA33644503
Cogswell, Richard P	RA19318925
Cogswell, Thomas M	RA11203870
Cohagan, Virgil L	RA27692166
Cohen, Allen	RA23810681
Cohen, Arnold	RA13345725
Cohen, David L	RA19329360
Cohen, Maurice	RA11021974
Cohen, Philip	RA31319136
Coil, Howard D	RA17348493
Coker, Charles L	RA38790138
Coker, John H	RA18294284
Colaprete, Nicholas	RA35593477
Colar, Joseph D	RA38618826

Name	Service No.
Cole, Benjamin F	RA2025695
Cole, Clarence E	RA3855148
Cole, Dennis H	RA5612070
Cole, Earle H	RA1136572
Cole, Eleanor V	WA0820573
Cole, Gail B	RA3977598
Cole, Guthrie L	RA1938545
Cole, Harry L	RA3369142
Cole, Howard W	RA5101823
Cole, Jacob W	RA5117405
Cole, James C	RA1129256
Cole, James R	RA3590196
Cole, Jesse	RA3402802
Cole, John P., Sr	RA1229517
Cole, John S	RA1446287
Cole, Juel N	RA1731424
Cole, Lyman E	RA1629105
Cole, Marshall, Jr	RA3215230
Cole, Orlin G	RA1814[illegible]
Cole, Richard L	RA1642864[illegible]
Cole, Robert B., Jr	RA1458747[illegible]
Cole, Roland S	RA1333357[illegible]
Cole, Solon L., Jr	RA1813563[illegible]
Cole, Ulia J	RA1621361[illegible]
Cole, William A	RA1642634[illegible]
Colegrove, Francis	RA3750469[illegible]
Colella, Phillip	RA4227742[illegible]
Coleman, Andrew B	RA1327631[illegible]
Coleman, Blair H. W	RA2388805[illegible]
Coleman, Burgess A	RA1325222[illegible]
Coleman, Ceaser, Jr	RA1825012[illegible]
Coleman, Charles L	RA1843168[illegible]
Coleman, Donald R	RA4292047[illegible]
Coleman, Earl J	RA5409168[illegible]
Coleman, Earl M	RA1434777[illegible]
Coleman, Edward L	RA1627944[illegible]
Coleman, Elton L	RA4406559[illegible]
Coleman, Gordon R	RA1737401[illegible]
Coleman, James E	RA3863056[illegible]
Coleman, James E	RA1338845[illegible]
Coleman, James H	RA5212572[illegible]
Coleman, James K	RA4209221[illegible]
Coleman, James L., Jr	RA5408542[illegible]
Coleman, John J	RA5215072[illegible]
Coleman, Johnnie B	RA1626877[illegible]
Coleman, Lonnie	RA1431902[illegible]
Coleman, Maximillia	RA3012083[illegible]
Coleman, Michael J	RA1229083[illegible]
Coleman, Ramon R	RA1160452[illegible]
Coleman, Robert C	RA3296762[illegible]
Coleman, Robert, Jr	RA2192216[illegible]
Coleman, Ronald P	RA1631283[illegible]
Coleman, Samuel R	RA5285774[illegible]
Coleman, Thomas, Jr	RA3429872[illegible]
Coleman, Vancil C	RA1727177[illegible]
Coles, Billy E	RA1723583[illegible]

#92 2nd 14 Cy

1024 hours
Tue., 1st of
November 1977
AbqNM., USA

Orlin Gentry COLE,

Plaintiff,

v.

The UNITED STATES,

Defendant.

No. 77-290

RECEIVED
NOV 8 1977
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

PLAINTIFFs' RESPONSE TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION:

Plaintiff very respectfully requests "The United States Supreme Court" not to deny my petition for a writ of certiorari, for the following reasons & to study the attached papers that may not be readily available to your court:

1. That plaintiff served honorably in the United States Army from Oct 1945 until Sep 1948 and then from Feb 1950 until June 1970.

2. This makes plaintiff a world war II era veteran, a combat veteran of the Korean conflict, who received a grievous penetrating combat head wound thru the left eye, while serving as a special volunteer combat infantryman. Also a Viet Nam era veteran who volunteered more than once for duty in Viet Nam, the second time, I asked for cancellation of an Army school with an earlier assignment to Viet Nam, the school was cancelled with new orders to return to Korea to the 2nd Infantry Division in 1969.